

THE MARKS LAW FIRM, P.C.

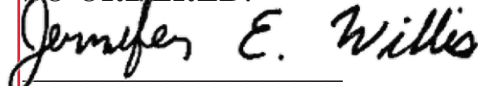
FILED VIA ECF

Hon. Analisa Torres
United States District Judge
United States District Court
500 Pearl Street, Courtroom 15D
New York, NY 10007

RE: **Kirkpatrick Dunbar v. 787 C**
Index: 1:22-cv-09968-AT-JW

The request for a Rule 37.2 Conference is GRANTED. The Conference shall be held in-person, in Courtroom 228, 40 Foley Square, New York, New York on **July 14, 2023 at 11:30 am.**

SO ORDERED.



Jennifer E. Willis
United States Magistrate Judge

June 29, 2023

Dear Judge Torres,

Plaintiff refiles the enclosed request for a Rule 37.2 Conference before Your Honor to adjudicate the present discovery issues.

Prior to Defendant's Counsel's Motion to Withdraw, the parties filed the request for a discovery conference on April 18, 2023 [Dkt. 20], which was granted and scheduled for June 1, 2023 [Dkt. 23]. The conference was then cancelled in light of Defendant's Counsel's Motion to Withdraw as Counsel. The parties appeared at a conference today before Magistrate Judge Jennifer E. Willis, in which Defendant's Counsel informed the Court for the first time that the issues with her client had been resolved and accordingly withdrew the pending motion.

During today's conference, Judge Willis advised Plaintiff that the best practice for the discovery motion would be to refile the request for a discovery conference. It should be noted that there have been no changes/resolution to the discovery dispute, other than the additional prejudicial delays caused by Defendant's tactics, which we intend to address with the Court and reserve all rights thereto.

As such, Plaintiff resubmits the enclosed request for an appearance before Your Honor to adjudicate the discovery issues in accordance with Section II(c) ("Discovery Disputes") of Your Honor's Individual Part Rules and SDNY Local Civil Rule 37.2.

We thank you and the Court for its time and consideration.

Respectfully Submitted,

The Marks Law Firm, P.C.

By: 

Bradly G. Marks

June 28, 2023

FILED VIA ECF

Hon. Analisa Torres
United States District Judge
United States District Court
500 Pearl Street, Courtroom 15D
New York, NY 10007

RE: **Kirkpatrick Dunbar v. 787 Coffee Roasters LLC**
Index: 1:22-cv-09968-AT

Dear Judge Torres,

The Parties respectfully request an appearance before Your Honor to adjudicate the discovery issues in accordance with Section II(c) (“Discovery Disputes”) of Your Honor’s Individual Part Rules and SDNY Local Civil Rule 37.2.

Plaintiff’s Position:

On January 27, 2023, Plaintiff served its Rule 26 Initial Disclosures, First Request for Interrogatories and First Request to Produce (Exhibit A) upon Defendants by direct mail in accordance with your Honor’s Case Management Plan and Scheduling Order. To date and more than a month after the Discovery Demands were interposed, Plaintiff has not received a response to its Discovery Demands. Per Your Honor’s Case Management Plan, the deadline to conclude all fact discovery is **May 26, 2023**, along with the deadline for depositions being **April 28, 2023** (just two weeks away) [Dkt. 14]. Plaintiff requires responses to its January 27, 2023 Discovery Demands in order to review and prepare for depositions and will face extreme prejudice if the requested discovery is not provided (as Plaintiff requires additional time to review the discovery prior to any depositions). It should be noted that, The Parties have engaged in two mediation conferences and Plaintiff does not believe that Defendant’s failure to respond to the Discovery Demands were in bad faith, but the fact is, Defendant has not responded to Plaintiff’s Discovery Demands.

On April 12, 2023, Plaintiff sent a discovery deficiency notice to Defendants via email outlining this discovery issue (Exhibit B) with details as to the Defendants’ noncompliance with discovery deadlines and requested a meet and confer to resolve the discovery dispute. On Friday, April 14, 2023, the Bradly G. Marks (counsel for Plaintiff) and Diana Seo (Counsel for Defendant, 787 Coffee Roasters LLC) engaged in a forty (40) minute rule 37.2 meet and confer regarding the discovery deficiency and lack of compliance with applicable discovery deadlines via telephone, but were unable to reach an agreement as to resolution of this discovery dispute.

Defendants' failure to produce discovery responses without any justification is highly prejudicial to Plaintiff, in light of the **April 28, 2023** deposition deadline. Therefore, Plaintiff respectfully requests a conference with Your Honor to adjudicate the discovery issues by obtaining the necessary discovery, extending the deadlines to complete discovery, stay all other deadlines pending the outcome of this discovery letter motion. The Defendants will not be prejudiced by such extensions to provide responses to Plaintiff's Discovery Demands.

Defendant's Position:

Plaintiff stated that he served First Request for Interrogatories and First Request to Produce along with Rule 26 Initial Disclosure on January 27, 2023. However, Defendant 787 Coffee Rosters LLC (hereafter, "Defendant") did not receive Plaintiff's discovery requests, either a hard-copy by first-class mail or a courtesy copy via email, until April 12, 2023.

As Plaintiff indicated above, the Parties have been extensively furthering a settlement discussion and have been through two mediation conferences to date. On April 12, 2023, Counsel for both Parties had a (follow-up) telephone conference to further the parties' settlement discussion and explore the possibility of early settlement as both parties are still interested and/or engaged in furthering their settlement discussion. During the April 12, 2023 telephone conference, Plaintiff's Counsel brought up the issue for the first time as to Defendant's pending discovery responses. Counsel for Defendant informed Plaintiff's Counsel of her non-receipt of Plaintiff's discovery requests. Defendant's Counsel asked Plaintiff's Counsel to send a copy of Plaintiff's discovery requests via email that were allegedly served on January 27, 2023. Upon Defendant's Counsel's request, Plaintiff forwarded a copy of the requests, but that was *the first time* that Defendant Counsel has ever seen Plaintiff's discovery requests, on April 12, 2023. Upon receipt of the requests, Defendant is currently in the process of preparing the responses. Defendant will also be fully cooperative with Plaintiff and will be available to participate in its deposition on the date that the parties agreed-upon after receiving a notice.

In consideration of the circumstances that the Parties have been engaging in an extensive *continuing* settlement discussion, along with the two mediation sessions, and the fact that Defendant did not receive Plaintiff's discovery requests until April 12, 2023, Defendant does not object extending the deadlines to complete discovery and staying all other corresponding deadlines if the Court allows the Parties to do so.

We thank you and the Court for its time and consideration.

Respectfully and Jointly Submitted,

The Marks Law Firm, P.C.

By: 
Bradley G. Marks